

The Senate State and Local Governmental Operations Committee offered the following substitute to SB 110:

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 36 of Title 36 of the Official Code of Georgia Annotated, relating to municipal annexation of territory, so as to repeal certain provisions relating to authority, procedures, identification, and status of lands relative to municipal deannexation; to provide for municipal deannexation of property pursuant to application of landowners thereof; to provide for procedures, conditions, and limitations; to provide for facilities and services; to provide for other matters relative to the foregoing; to provide for bonded indebtedness in the event of a deannexation of property from a municipality; to provide for the assessment and collection of taxes; to provide for the resolution of disputes relating to zoning and land use arising from a deannexation; to provide for notice; to provide for notice of objection; to provide for an objection to zoning; to provide for a period for mitigation of objections; to provide for mediation; to provide for a citizen review panel; to provide for review and a recommendation; to provide for the filing for a petition in the superior court for sanctions; to provide for judicial review; to provide for the effective date of a zoning decision; to provide for additional procedures; to provide for other objections to a deannexation; to amend Code Section 36-66-4 of the Official Code of Georgia Annotated, relating to zoning procedures applicable upon annexation of property into a municipality, so as to provide for procedures in the event of a deannexation; to provide for notice; to provide for objection and a hearing; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 36 of Title 36 of the Official Code of Georgia Annotated, relating to annexation of territory, is amended by revising Code Section 36-36-22, relating to authority, procedures, identification, and status of lands relative to deannexation, as follows:

"36-36-22.

~~Authority is granted to the governing bodies of the several municipal corporations of this state to deannex an area or areas of the existing corporate limits thereof, in accordance with~~

~~the procedures provided in this article and in Article 1 of this chapter, upon the written and signed applications of all of the owners of all of the land, except the owners of any public street, road, highway, or right of way, proposed to be deannexed, containing a complete description of the lands to be deannexed and the adoption of a resolution by the governing authority of the county in which such property is located consenting to such deannexation. Lands to be deannexed at any one time shall be treated as one body, regardless of the number of owners, and all parts shall be considered as adjoining the limits of the municipal corporation when any one part of the entire body abuts such limits. When such application is acted upon by the municipal authorities and the land is, by ordinance, deannexed from the municipal corporation, an identification of the property so deannexed shall be filed with the Department of Community Affairs and with the governing authority of the county in which the property is located in accordance with Code Section 36-36-3. When so deannexed, such lands shall cease to constitute a part of the lands within the corporate limits of the municipal corporation as completely and fully as if the limits had been marked and defined by local Act of the General Assembly Reserved."~~

SECTION 2.

Said chapter is further amended by adding a new article to read as follows:

"ARTICLE 7

36-36-100.

The procedures of this article shall apply to all deannexations pursuant to this chapter but shall not apply to deannexations by local Acts of the General Assembly.

36-36-101.

(a) An area or areas within the existing corporate limits of a municipality that are contiguous to the unincorporated area of a county within which the municipality is located shall be deannexed in accordance with the procedures provided in this Code section. Such deannexation shall occur upon the written and signed application of all of the owners of all of the lands, except the owners of any public street, road, highway, or right of way, proposed to be deannexed.

(b)(1) The application required by subsection (a) of this Code section shall contain a complete description of the lands to be deannexed. In addition, a copy of a resolution by the governing authority of the county in which such property is located consenting to such deannexation shall also be included in the application.

(2) Upon adoption of a resolution consenting to the deannexation of municipal property, the county governing authority shall provide a copy of the resolution to the governing authority of the municipality within which the property proposed for deannexation is located within ten business days of the adoption of the resolution. Upon receipt of such copy, the municipal governing authority shall have ten business days to file an objection pursuant to subsection (f) of Code Section 36-36-104 unless such municipality has previously filed an objection pursuant to subsection (c) of Code Section 36-36-104 in which case any objections filed pursuant to subsection (f) of Code Section 36-36-104 shall be considered as part of the dispute resolution process initiated pursuant to subsection (c) of Code Section 36-36-104. The absence of a written notice of intent to object by a municipality shall mean the deannexation shall become effective as provided in subsection (c) of this Code section.

(c)(1) When a complete application is submitted to the municipal authorities, the land shall be deannexed from the municipal corporation effective for ad valorem tax purposes on December 31 of the year during which such application is submitted and for all other purposes on the first day of the next calendar quarter which begins at least one month after the month during which the requirements of this article have been met.

(2) Unless otherwise agreed in writing by a county governing authority and the municipal governing authority, where property zoned and used for commercial purposes is deannexed from a municipality with an independent school system, the effective date for the purposes of ad valorem taxes levied for educational purposes shall be December 31 of the year after the year in which the requirements of this article have been met.

(d) An identification of the property so deannexed shall be filed with the Department of Community Affairs and with the governing authority of the county in which the property is located in accordance with Code Section 36-36-3.

(e) When deannexed pursuant to this Code section, such lands shall cease to constitute a part of the lands within the corporate limits of the municipal corporation as completely and fully as if the limits had been marked and defined by local Act of the General Assembly.

(f) Lands to be deannexed at any one time shall be treated as one body, regardless of the number of owners, and all parts shall be considered as adjoining the limits of the municipal corporation when any one part of the entire body abuts such limits.

(g) For the purposes of this Code section, property shall be considered contiguous to the unincorporated area of a county if at least one-eighth of the aggregate external boundary or 50 feet of the area proposed for deannexation either abuts directly on an unincorporated area or would directly abut on the unincorporated area if it were not otherwise separated from the municipal boundary by lands owned by a municipal corporation, the county, or some other political subdivision; lands owned by this state; the definite width of any street

1 or street right of way; any creek or river; or any right of way of a railroad or other public
2 service corporation. If, as a result of deannexation, some portion of a municipality no
3 longer directly abuts the remainder of the municipal territory, nothing in this article shall
4 be construed to imply that the area no longer abutting the municipality is no longer within
5 the incorporated area of the municipality from which the property was deannexed.

6 (h) Property that has been annexed to a municipal corporation shall not be deannexed
7 pursuant to the provisions of this Code section until at least two calendar years after the
8 date the annexation of said property became effective.

9 (i) Property that is included within the municipal boundaries of a newly incorporated
10 municipality shall not be subject to deannexation pursuant to the provisions of this Code
11 section until at least two calendar years after the date the incorporation became effective.

12 (j) Property that has been deannexed from a municipal corporation pursuant to the
13 provisions of this Code section shall not be annexed again until at least two calendar years
14 after the date the deannexation of said property became effective, unless such annexation
15 is accomplished by local Act of the General Assembly.

16 (k) Notwithstanding any other provision of this article, property included within the
17 boundaries of a municipality on January 1, 2007, that is owned by a corporation whose
18 stock is publicly traded on an exchange located in the United States or property that is
19 leased by a corporation whose stock is publicly traded on an exchange located in the United
20 States may not be deannexed pursuant to this article except with the approval of the
21 municipal governing authority within which the property proposed for deannexation is
22 located.

23 36-36-102.

24 (a)(1) Upon receiving an application for deannexation pursuant to Code Section
25 36-36-101, the municipal governing authority shall notify the governing authority of the
26 county within five business days of receipt of such notice if any municipally owned
27 public facilities are located in the area proposed to be deannexed.

28 (2) Except as otherwise provided in this Code section, ownership and control of
29 municipally owned public properties and facilities are not diminished or otherwise
30 affected by deannexation of the area in which the municipally owned public property or
31 facility is located.

32 (3) Whenever municipally owned property or facility within an area deannexed from a
33 municipality is no longer usable for service to the area as a result of the deannexation, the
34 county shall be required to acquire said property from the municipal governing authority
35 under the following conditions:

36 (A) The deannexation must be final;

1 (B) The governing authority of the municipality has adopted an ordinance or resolution
2 declaring the property or facility is no longer usable for service to the deannexed area
3 as a result of the deannexation; and

4 (C) Unless otherwise provided by mutual agreement, the municipality shall be
5 compensated by the county in an amount equal to the fair market value of the property
6 or facility which is no longer usable for service to the deannexed area. If the county
7 and municipality fail to agree on the fair market value of the property or facility within
8 180 days following adoption of the resolution required by this subsection, the question
9 of fair market value shall be submitted to a special master appointed by the superior
10 court of the county in which the property or facility is located for determination of
11 value.

12 (b) Notwithstanding the provisions of subsection (a) of this Code section, where either
13 water distribution or sewage treatment services or both are provided by a municipality in
14 accordance with a service delivery agreement entered into pursuant to Article 2 of Chapter
15 70 of this title to an area of the municipality that has been deannexed, the municipality may
16 continue to provide such services to the deannexed area after the deannexation becomes
17 effective and ownership and control of facilities are not diminished or otherwise affected
18 by the deannexation. Water distribution and sewage treatment services authorized by this
19 subsection shall be provided at rates and in accordance with terms as may be applicable to
20 water and sewer services provided to other municipal customers within the unincorporated
21 area. Where there are no prior existing municipal customers in the unincorporated area,
22 the rates charged to customers in the deannexed area shall be reasonable and may be
23 subject to challenge as provided in paragraph (2) of Code Section 36-70-24.

24 (c) Whenever a property is deannexed on both sides of a municipal road right of way, the
25 county within which the deannexed property is located shall assume the ownership, control,
26 care, and maintenance of such right of way unless the governing authorities of the
27 municipality and the county agree otherwise by joint resolution.

28 36-36-103.

29 Whenever land is deannexed from a municipal corporation pursuant to this article, any
30 bonded indebtedness of the municipality which is outstanding as of the effective date of the
31 deannexation shall become the debt and obligation of a special tax district. The special tax
32 district shall correspond to and be conterminous with the corporate limits of the
33 municipality as of the effective date of the deannexation. The municipality shall provide
34 for the assessment and collection of taxes within the special tax district in the same manner
35 and to the same extent that such taxes were previously imposed by the municipality in

1 accordance with the terms of the obligations of any bonded indebtedness of the
2 municipality which is outstanding on the effective date of the deannexation.

3 36-36-104.

4 (a) The intent of this Code section is to provide a mechanism to resolve disputes arising
5 out of the rezoning of property to a more intense land use in conjunction with or
6 subsequent to deannexation in order to facilitate coordinated planning between counties
7 and municipalities particularly with respect to areas contiguous to municipal boundaries.

8 (b) As used in this Code section, the term 'objection' means an objection to a proposed
9 change in land use which results in a substantial change in the intensity of the allowable
10 use of the property or a change to a significantly different allowable use.

11 (c)(1) When an initial zoning of property is sought pursuant to subsection (d) of Code
12 Section 36-66-4 or when the rezoning of deannexed property is sought within one year
13 of the effective date of the deannexation, the county governing authority shall give notice
14 to the municipal governing authority within seven calendar days of the filing of the
15 application for initial zoning or rezoning. Upon receipt of such notice, the municipal
16 governing authority shall have seven calendar days to notify the county in writing of its
17 intent to raise an objection to the proposed zoning or rezoning of the property and shall
18 specify the basis for the objection. If the municipal governing authority serves notice of
19 its intent to object, then the municipal governing authority shall have ten calendar days
20 from the date of the municipality's notice to document in writing the nature of the
21 objection specifically identifying the basis for the objection including any increased
22 service delivery or infrastructure costs. The absence of a written notice of intent to object
23 or failure to document the nature of the objection shall mean the county may proceed
24 with the zoning or rezoning and no subsequent objections under this process may be filed
25 for the zoning or rezoning under consideration.

26 (2) Commencing with the date of receipt by the county of the municipality's documented
27 objections, representatives of the municipal corporation and the county shall have 21
28 calendar days to devise mitigating measures to address the municipality's specific
29 objections to the proposed zoning or rezoning. The governing authority of the municipal
30 corporation and the governing authority of the county may agree on mitigating measures
31 or agree in writing to waive the objections at any time within the 21 calendar day period,
32 in which event the county may proceed with the zoning or rezoning in accordance with
33 such agreement; or, where an initial zoning is proposed concurrent with deannexation,
34 the county may approve, deny, or abandon the deannexation of all or parts of the property
35 under review.

(3) If the representatives of the municipal corporation and the county fail to reach agreement on the objections and mitigating measures within the 21 calendar day period, either the governing authority of the municipal corporation or the governing authority of the county may insist upon appointment of a mediator within seven calendar days after the end of the 21 day period to assist in resolving the dispute. The mediator shall be mutually selected and appointed within seven calendar days of either party's timely, written insistence on a mediator. The party insisting on use of the mediator shall bear two-thirds of the expense of the mediation and the other party shall bear one-third of the expense of the mediation. If both the municipality and the county insist on mediation, the expenses of mediation shall be shared equally. The mediator shall have up to 28 calendar days to meet with the parties to develop alternatives to resolve the objections. If the municipal corporation and the county agree on alternatives to resolve the objections, the county may proceed in accordance with the mediated agreement.

(4) If the objections are not resolved by the end of the 28 day period, the municipal governing authority or the county governing authority may, no later than seven calendar days after the conclusion of such 28 day period, request review by a citizen review panel. The citizen review panel shall be an independent body composed of one resident of the municipal corporation appointed by the municipal governing authority, one resident of the county appointed by the county governing authority, and one nonresident of the county who is a land use planning professional mutually selected by the municipal and county appointees to the citizen review panel. No elected or appointed officials or employees, contractors, or vendors of a municipality or county may serve on the citizen review panel. If a request for review by a citizen review panel is made, the mediator shall make arrangements to appear personally at the first meeting of the panel and brief the panel members regarding the objections and proposed mitigating measures or provide a written presentation of such objections and proposed mitigating measures to the panel members on or before the date of such first meeting, whichever the mediator deems appropriate. The citizen review panel shall meet at least once but may conduct as many meetings as necessary to complete its review within a 21 calendar day period. All meetings of the citizen review panel shall be open to the public pursuant to Chapter 14 of Title 50. Within 21 calendar days of the request for review, the citizen review panel shall complete its review of the evidence submitted by the county and the municipality concerning the objections and proposed mitigating measures and shall issue its own recommendations.

(5) The citizen review panel shall recommend approval or denial of the zoning or rezoning and address the objections and proposed mitigating measures. Where an initial zoning is proposed concurrent with deannexation, the panel may also recommend that the

1 deannexation be approved or abandoned. The findings and recommendations of the
2 citizen review panel shall not be binding.

3 (6) Following receipt of the recommendations of the citizen review panel, the county
4 may:

- 5 (A) Zone or rezone all or parts of the property under review;
- 6 (B) Zone or rezone all or parts of the property under review with mitigating measures;
- 7 (C) Deny the zoning or rezoning of all or parts of the property under review; or
- 8 (D) Any combination of the foregoing.

9 Where an initial zoning is proposed concurrent with deannexation, the county may also
10 approve, deny, or abandon the proposed deannexation of all or parts of the property under
11 review.

12 (7) At any time during the process set forth in this Code section, the county or
13 municipality may file a petition in superior court seeking sanctions against a party for any
14 objections or proposed mitigating measures that lack substantial justification or that were
15 interposed for purposes of delay or harassment. Such petition shall be assigned to a
16 judge, pursuant to Code Section 15-1-9.1 or 15-6-13, who is not a judge in the circuit in
17 which the county is located. The judge selected may also be a senior judge pursuant to
18 Code Section 15-1-9.2 who resides in another circuit. The judge shall determine whether
19 any objections or proposed mitigating measures lack substantial justification or were
20 interposed for delay or harassment and shall assess against the party raising such
21 objection or proposing or objecting to such mitigating measures the full cost of attorney
22 fees and other costs incurred by the other party in responding to the objections or
23 proposed mitigating measures.

24 (8) Unless otherwise agreed, a zoning or rezoning decision made pursuant to this Code
25 section shall not be effective until 28 calendar days following the completion of the
26 process authorized by this Code section and the zoning or rezoning vote by the county
27 governing authority.

28 (9) During the process set forth in this Code section, the county may proceed with notice,
29 hearings, and other requirements for zoning or rezoning in accordance with the county's
30 zoning ordinance.

31 (d) If the deannexation, zoning, or rezoning is denied or abandoned based in whole or in
32 part on the municipality's objections, the municipality shall not zone or rezone the property
33 or allow any use of a similar or greater density or intensity to that proposed for the property
34 which had been objected to by the municipality pursuant to this Code section for a one-year
35 period after the denial or abandonment.

36 (e) The process set forth in subsection (c) of this Code section specifies minimum
37 procedures for addressing objections. However, a county and a municipality may agree to

1 additional procedures by resolution of the county and municipal governing authorities.
2 Notwithstanding subsections (c) and (d) of this Code section, any agreement to resolve
3 county objections to a proposed land use of an area to be annexed into a municipality that
4 was in effect on July 1, 2007, and includes a provision whereby the county and a
5 municipality agree to be bound by the recommendations of an annexation appeals board
6 shall remain in effect until the parties agree otherwise.

7 (f) Objections related to a proposed deannexation, other than land use objections arising
8 out of an initial zoning or rezoning of the property proposed for deannexation, may also be
9 submitted for resolution through the process set forth in subsection (c) of this Code section.
10 A municipal governing authority may initiate such dispute resolution process by giving
11 notice to the county of the objection at the same time as the notice provided for in
12 paragraph (1) of subsection (a) of Code Section 36-36-102. Any such dispute shall be
13 addressed in accordance with substantially the same procedures, conditions, and limitations
14 applicable to the resolution of a land use objection pursuant to subsection (c) of this Code
15 section."

16 SECTION 3.

17 Code Section 36-66-4, relating to zoning procedures applicable upon annexation of property
18 into a municipality, is amended by adding a new subsection (d.1) to read as follows:

19 "(d.1) If the zoning is for property to be deannexed from a municipality, then:

20 (1) The governing authority of the county receiving such property shall complete the
21 procedures required by this chapter for such zoning, except the final vote of the county
22 governing authority shall be taken prior to the effective date of the deannexation but no
23 sooner than the date the notice of the proposed annexation is provided to the governing
24 authority of the county as required under Code Section 36-36-102;

25 (2) The hearing required by subsection (a) of this Code section shall be conducted prior
26 to the deannexation of the subject property out of the municipality;

27 (3) In addition to the other notice requirements of this Code section, the county
28 governing authority shall cause to be published within a newspaper of general circulation
29 within the territorial boundaries of the county a notice of the hearing as required under
30 the provisions of subsection (a) or (b), as applicable, of this Code section and shall place
31 a sign on the property when required by subsection (b) of this Code section; and

32 (4) The zoning classification approved by the county following the hearing required by
33 this Code section shall become effective on the latest of:

34 (A) The date the zoning is approved by the county;

35 (B) The date that the deannexation becomes effective pursuant to subsection (c) of
36 Code Section 36-36-101; or

1 (C) Where a municipality has interposed an objection pursuant to Code Section
2 36-36-104, the date provided for in paragraph (8) of subsection (c) of said Code
3 section."

4 **SECTION 4.**

5 All laws and parts of laws in conflict with this Act are repealed.